IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 21415 of 2006(Y)

PETITIONER:

THE MUTHALAPURAM SERVICE CO-OPERATIVE BANK, LTD. NO.140, REPRESENTED BY ITS SECRETARY, MUTHALAPURAM P.O., 686 665.

BY ADV. SRI.P.RAMAKRISHNAN
SRI.A.JAYASANKAR

RESPONDENTS:
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1. LABOUR COURT, ERNAKULAM, KOCHI -18.

2. K.M.PAUL, KADAKKELIL HOUSE, ELANJI P.O.,686 665.

BY ADV. SMT.K.NANDINI
GOVERNMENT PLEADER SRI.T.T. MAHMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.21415/07

APPENDIX

EXT.P1: COPY OF AWARD DATED 22.3.2006 IN I.D. NO.79/97.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.21415 OF 2006

Dated this the 19th day of December, 2007

JUDGMENT

The management in I.D.No.79/97 before the Labour Court, Ernakulam is the petitioner-Society herein. The Society is challenging Ext.P1 award of the Labour Court in that I.D. The issue referred for adjudication was:

> "Whether the dismissal of Sri. K.M. Paul is justifiable or not? If not what relief he is entitled to?"

Since the dismissal of the workman was after having been found guilty of serious misconduct proved in an enquiry held for the purpose, the Labour Court first examined the validity of the enquiry as a preliminary point. After examining, the evidence on both sides, the Tribunal came to the finding that the enquiry is proper and valid and that the findings of the Enquiry Officer are supported by evidence on record, which are not perverse. However in spite of the finding that the misconduct involved misappropriation of money belonging to the management, the

Tribunal took a lenient view and directed the petitioner Society to reinstate the workman into service with continuity of service and 25% backwages. That part of Ext.P1 award whereby the Labour Court interfered with the punishment imposed by the petitioner management is under challenge before me.

2. The contention of the petitioner is that after having found the workman guilty of serious misconducts involving misappropriation of money, the Labour Court went wrong in exercising powers under Section 11A of the Industrial Disputes Act to direct reinstatement of the workman with 25% backwages. The learned counsel for the petitioner points out that the workman was proceeded against for similar misconducts several times, earlier also, as is evident from the written statement of the management which has been reproduced in the award itself. He also submits that as settled by the decision of the Supreme Court on the subject, the power under Section 11A can be exercised by the Labour Court only after finding that the punishment imposed by the management is shockingly disproportionate to the gravity of the misconduct. They would submit that in this case there is no scope for such a finding in view of the seriousness of the misconducts found against the workman as also his past

misconducts.

3. I have considered the contentions in detail. In so far as the workman has not chosen to challenge the award, the only question I am called upon to decide is as to whether the Labour Court is so justified in interfering with the punishment of dismissal imposed by the management on the workman, invoking powers under Section 11A of the I.D. Act. The charges proved against the workman were as follows.

> "(i) The delinquent collected excess payment from the customers for the sale of 10:10:10 Rubber mixer. He had collected a total of Rs.1560/- out of 24 detected cases.
>
> (ii) He had misappropriated a total amount of Rs.819.25 from 12 detected instances, by manipulating the accounts.
>
> (iii) He had misappropriated a total amount of Rs.146 from 6 detected cases by wrongly calculating the amounts.
>
> (iv) He had misappropriated a total of Rs.222.85 by not entering the amounts in sales register and cash book, in 6 proved instances.
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> (v) He had misappropriated Rs.100.60 on 30.4.93 without remitting the sales proceeds in full.
>
> (vi) He had misappropriated a total of Rs.77.80 out of 5 proved instances, without entering in the sales register and cash book."

In Ext.P1 award the Labour Court had noted the contention of the management in their written statement regarding the past conduct of the workman as follows:

> "The post record of the employee is far from a blemishless one. He was proceeded against many a times. He was served with a show cause notice as early as on 14.12.81 for deficit in stock. He had admitted his guilt in his reply dated 11.1.1982 and pleaded for mercy. The board had taken a lenient view and the employee remitted the amount with 18% interest. He was again served with a notice on 8.2.83 for misappropriation of amounts and was placed under suspension. On 10.2.1983, he had taken back on 19.2.1983. He was once again placed under suspension for misappropriation with effect from 31.8.1984. He admitted his guilt on 10.3.1985 and was taken back. Sri. K.M. Paul was served with a show cause notice on 22.12.1990 and was placed under suspension for misappropriating and amount of Rs.5229/- An enquiry was held and he was found to be guilty. One increment was barred with cumulative effect as punishment, vide the resolution No.336 dated 13.4.1991. Sri. Paul has proved by his conduct that he is not a fit person to continue in the services of this bank. Such an employee should be shown the exit for the industry to exist.
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> The conduct of the employee has tarnished the image of the management in the locality. The management lost Confidence in Sri. K.M. Paul."

4. Needless to say, the above would show that the misconducts proved against the workman were certainly very serious in nature and he was also found to have committed

similar misconducts several times earlier. The Supreme Court had time and again held that the Labour Couts and Industrial Tribunals should not interfere with punishment imposed by the management unless the punishment is shockingly disproportionate to the gravity of the misconducts. In the decision of **JANATHA BAZAR (SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD.) AND OTHERS** Vs. **SECRETARY, SAHAKARAI NOUKARARA SANGHA AND OTHERS [(2000) 7 Supreme Court Cases 517]**, the Supreme Court held as follows:

> "The question involved in these appeals is - whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods fro the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or leaglised by reinstatement in service with full or part of backwages.
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> As stated above, the learned Single

Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh V. Krishan Behari). In U.P. SRTC v. Basudeo Chaudharoy this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs.65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the way bill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in **Punjab Dairy Development Corp. Ltd v. Kala Singh** this Court considered the case of a workman

> who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court +held (at SCC pp. 161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty".

Again in the decision of **REGIONAL MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION** v. **SOHAN LAL [(2004) 8 SCC 218]** the Supreme Court held that in the case of misconducts involving dishonesty, the quantum of loss is immaterial and it is the loss of confidence that matters. Tested in the anvil of the law as enunciated in the above decisions, taking into account the seriousness of the charges proved against the workman involved and his past misconducts as narrated above, I have no hesitation to hold that the Labour Court went wrong in interfering with the punishment imposed by the management by directing the petitioner to reinstate the workman with 25% backwages by substituting barring of two increments as punishment to be imposed on the workman.

Therefore Ext.P1 award is modified setting aside that part of the award by which the Labour Court directed reinstatement with backwages and substituted the punishment of barring of two increments on the workman.

Accordingly, the writ petition is allowed holding that the workman involved in the I.D.No.79/97 before the Labour Court, Ernakulam is not entitled to any reliefs in the I.D.

S. SIRI JAGAN, JUDGE

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